

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	8:04CR71
vs.)	
)	ORDER
ROBERT TIMOTHY DAVIS,)	
)	
Defendant.)	

Defendant Robert Timothy Davis (Davis) appeared before the court on February 11, 2009, on the Petition for Warrant or Summons for Offender Under Supervision (Report) (Filing No. 65). Davis was represented by retained counsel, James H. McGough, and the United States was represented by Assistant U.S. Attorney Douglas R. Semisch. Through his counsel, Davis requested a probable cause hearing and requested the court to continue such hearing past March 25, 2008, the date of Davis's state preliminary hearing on the charge in the Report. The government had no objection to the continuance and Davis acknowledged that the additional time would be excluded from the Speedy Trial Act computations.

The government moved for detention. Davis requested a detention hearing. Through counsel, Davis proffered he would abide by conditions of release and was released on a recognizance bond in the state court proceedings. Davis presented no other evidence. The government presented the testimony of Senior Probation Officer Williamette Gallagher. Officer Gallagher testified she has supervised Davis since he was placed on supervised release. Davis has failed to report in writing on four occasions, and has failed to report to Officer Gallagher on several other occasions after she had been in telephonic contact with Davis. Davis has failed to make restitution payments as directed while on supervised release. Davis has failed to keep Officer Gallagher apprised of Davis's current residence and employment. When Davis was informed of the outstanding local arrest warrant, Davis informed Officer Gallagher that Davis would self-surrender the next day. Davis failed to do so and had to be physically arrested by Omaha police. Davis provided Officer Gallagher with a false name of a motel where he was allegedly staying. Davis

informed Officer Gallagher that Davis wanted to clear things up before his arrest so that his actual arrest might not be required.

It is Davis's burden under 18 U.S.C. § 3143 to establish by clear and convincing evidence that he is neither a flight risk nor a danger to the community. In light of Davis's previous criminal record, the circumstances of the current charges, Davis's cavalier attitude in following his probation officer's directions, the court finds Davis's proffer has failed to carry this burden, and Davis should be detained pending his preliminary examination.

IT IS ORDERED:

1. A preliminary examination will be held before the undersigned magistrate judge in Courtroom No. 7, Second Floor, Roman L. Hruska U.S. Courthouse, 111 South 18th Plaza, Omaha, Nebraska, **at 9:00 a.m. on April 7, 2008**. Defendant must be present in person.
2. Defendant Robert Timothy Davis is committed to the custody of the Attorney General or his designated representative for confinement in a correctional facility;
3. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel; and
4. Upon order of a United States court or upon request of an attorney for the government, the person in charge of the corrections facility shall deliver defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

DATED this 12th day of February, 2008.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge